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1951

January 8

Dr. Hilton C. Buley
Commissioner of Education
State House Annex

Dear Dr. Buley:

I reply to your letter of January 2, 1951 regarding Emily Fife, a handicapped child residing within the jurisdiction of the Deerfield school board.

A review of the correspondence pertaining to this matter and of the reports of examining physicians compels the conclusion that the Deerfield school board is required to provide transportation to the child in question. The report of an earlier investigation of this problem discloses that the Deerfield school board has sufficient amounts in its transportation appropriation to provide for this situation. This same report discloses that the cost to the town for traveling the additional distance necessary to furnish the needed transportation would not exceed two hundred dollars, and this can hardly be construed as an unreasonable expense on the school board under all the circumstances.

Revised Laws, chapter 134, section 43 specifies that "every handicapped child capable of being benefited by instruction shall attend school or other place for such instruction to which he may be assigned or shall be instructed in his home for at least two hours per week for such number of weeks as the state board of education may determine . . ." Section 45 of the same chapter obliges the school board to furnish suitable transportation to all handicapped children who are physically able to be so transported from their homes to the place where such instruction is to be furnished except where the cost of such transportation would constitute an unreasonable expense. In the latter case, the school board is obliged to board the child in question near where such instruction would be furnished and to provide transportation therefrom.

It is clear, therefore, that the question of whether or not the child is to be instructed at home is decided by the state board of education and not by the local board. This being determined, the question of transportation is for the local school board once it has been shown conclusively that the child is physically able to be transported. This is the case here, upon the certifications of Drs. Butterfield and Dahlgren.

C O P Y

REPLY-GENERAL

January 8, 1951

Dr. Hilton C. Buley

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Should the Deerfield school board refuse to comply with the provisions of the statute, it may be compelled to do so by court order. This, of course, would be an unduly embarrassing and expensive procedure for the school board, which I am sure it will wish to avoid.

It is my opinion that the case here presented is exactly the type contemplated by the statute and that the spirit and purpose of our law would be violated if this child were denied the benefits of schooling afforded to other children in the same community.

Very truly yours,

Wm. S. Green
Deputy Attorney General

WSG:HP

STATE OF NEW HAMPSHIRE
INTER-DEPARTMENT COMMUNICATION

DATE January 2, 1951

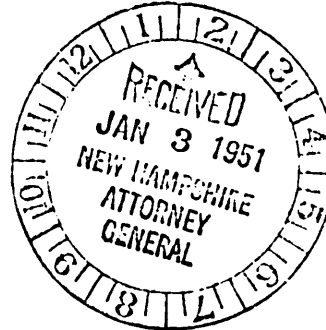
Dr. Hilton C. Buley

AT (OFFICE)

Education

ECT

Mr. William S. Green
Deputy Attorney General
State House, Room 312
Concord, New Hampshire



Dear Mr. Green:

I would appreciate it very much if your office would give me an opinion relative to making an order requiring the Deerfield School Board to provide transportation to Emily Fife, a handicapped child. In a letter of October 11, 1950, I pointed out to the Deerfield School Board the obligation of the school district according to Chapter 134, Section 45, as follows:

"Transportation. The school board shall furnish suitable transportation to all handicapped children, who are physically able to be so transported, from their homes to the place where such instruction is to be furnished. Where the cost of such transportation would constitute an unreasonable expense the school board shall, at the expense of the district, board the children near the place where such instruction is to be furnished and provide transportation therefrom."

Since that time, considerable negotiation has taken place, even to the extent of securing a second doctor's confirmation of Dr. Butterfield's original diagnosis of the handicapped nature of this child. Letters are attached for your information which indicate that it was Dr. Dahlgren who confirmed Dr. Butterfield's diagnosis.

Now the local school board at Deerfield wants to provide two hours of home instruction to avoid its legal obligation of providing transportation as specified in Chapter 134, Section 43. The Department of Education maintains that as long as the two doctors agree that this child, Emily Fife, is capable of transportation, the Deerfield School Board is obligated to provide such transportation. The provision of two hours per week of home instruction is not fulfilling the intent of the law. Will you please advise me on the position of the Department of Education in this matter and also what steps should be taken with the refusal of the Deerfield School Board to act upon my order of October 11? Thank you very much.

Sincerely yours,

Hilton Buley

Commissioner of Education